

COMPLIANCE BOARD OPINION NO. 96-13

November 26, 1996

Mr. Conrad P. Potemra

The Open Meetings Compliance Board has considered your complaint that the Poolesville Town Commissioners violated the Open Meetings Act by making a decision about newspaper advertising in closed session. The Compliance Board concludes that the Act was not violated.

I

Complaint and Response

Your complaint states that, at an open session on September 16, 1996, you asked a question about the choice of a newspaper in which the town would run a legal advertisement. The response, according to your complaint, was that the decision about newspaper placement of legal advertisements was made during an executive session. Your complaint is that “the decision to advertise for a public hearing also requires a financial decision to pay for the advertisement,” and this financial decision should have been made in open session.

In a timely response on behalf of the Commissioners, Charles S. Rand, Esquire, the Town Attorney, responded that the budgetary decision — that is, how much money was to be expended for legal and other advertising — was previously made in open session as part of the town’s budget approval process. Decisions about which newspaper is to receive a particular town advertisement are normally made by the town manager. In this instance, at a closed meeting on September 3, 1996, the Commissioners discussed where legal advertisements might be placed. The issue was whether advertisements generally ought to be placed in one newspaper or two. Although the Commissioners apparently reached some degree of consensus that advertising in two newspapers would not increase costs above the budgeted amount, according to the minutes no decision was made; the issue was deferred for discussion at another meeting.

Mr. Rand also supplied a tape of the September 16 meeting, as well as a transcript of the colloquy between you and Commissioner Johnson.

Commissioner Johnson stated that a discussion of policies regarding the placement of advertising “was considered to be an executive function.”

II

Analysis

With exceptions not pertinent here, the Act “does not apply to ... a public body when it is carrying out ... an executive function.” §10-503(a)(1)(i) of the State Government Article. The Compliance Board has discussed the “executive function” exclusion many times before and will do so only briefly here.¹

First, we consider whether the discussion at issue — where to publish legal advertising — falls within any of the other defined functions in the Act.² It does not. A discussion whether to place an advertisement in one newspaper or two is not part of the process of “approving, disapproving, or amending a budget.” Budgetary decisions were already made as part of the Commissioners’ budget adoption process. Nor is a general discussion about the number of newspapers in which to advertise part of the process of “approving, disapproving, or amending a contract” with any newspaper. Therefore, the discussion was not a quasi-legislative function. §10-502(j).

Furthermore, a town’s choice about the types of newspapers in which it will advertise reflects the administration or implementation of existing law — namely, the provisions of State or municipal law that require advertised notice of hearings or other official actions. Thus, the discussion of newspaper advertising in the Commissioners’ closed meeting of September 3 fell within the “executive function” exclusion. The Act did not apply to it.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
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¹ A fuller discussion may be found in Compliance Board Opinions 92-2 (October 23, 1992), 92-3 (November 9, 1992), 92-5 (December 22, 1992), 93-2 (January 7, 1993), 93-4 (February 24, 1993), 94-7 (August 16, 1994), 95-2 (June 20, 1995), 95-5 (October 18, 1995), 95-7 (October 18, 1995), 95-8 (November 2, 1995), and 96-5 (May 1, 1996).

² If a discussion falls within one of the Act’s other defined “functions,” the discussion cannot be considered an “executive function.” §10-502(d)(2).